IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1614 OF 2006

IN

SUIT NO.1560 OF 1995

Denesh S. Advani @ Laxman S. Advani
@ L.S. Advani .. Plaintiff

versus

Jasbir Valia wd/o Raj Mamraj Valid
and the Shalimar Hotel Pvt.Ltd. .. Defendants

...

Mr.S.K. Jain for the plaintiff.
Mr.V.G. Mehta for the defendants.

CORAM : D.G. KARNIK,J.
DATED : 15th January 2007.

P.C.:

1. This Chamber Summons is taken up in the suit which is part-heard.

2. By this Chamber Summons, plaintiff seeks to amend the plaint by addition of the respondent as plaintiff no.2 in the suit. The application is strongly opposed by the defendants. Counsel for the defendant submits that the suit is part-heard. The evidence of all the parties has been recorded. The application for amendment is made at a very late stage after conclusion of the recording of the evidence and in order to get over the admissions given by the plaintiff in his deposition. He further submits that the delay in making the application has not been satisfactorily explained.

3. I have perused the affidavit filed in support of the Chamber Summons. The affidavit does not explain the delay at all. The suit has been filed in the year 1995. Recording of the oral evidence is over and the suit is posted for arguments. At that stage, the application for amendment is made without giving any explanation for the delay. In my view, the delay is gross and is of more than 11 years and no attempt has been made to explain the delay at all.

4. There is one more reason for not allowing the amendment. The plaintiff wants the respondent to be joined as a co-plaintiff. The respondent has not consented for joining himself as a co-plaintiff. There is nothing on record to show that the respondent is willing to join as plaintiff no.2. Respondent has not signed the Chamber Summons nor filed any affidavit nor has he in any manner indicated his willingness to join as a party plaintiff. It is one thing to join a person as party defendant when he can be joined without his consent, and quite another to join him as a plaintiff. For joining any person as a co-plaintiff he must consent thereto. To repeat, there is nothing on record to indicate that the respondent is willing to join himself as a co-plaintiff.

5. For these reasons, Chamber Summons is rejected.

D.G. KARNIK, J